

EXHIBIT “E”

“Deposition Of Sergeant Scott Peay”

(cited pages only)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

KRISTINE BIGGS JOHNSON,)	
)	
Plaintiff,)	Civil No. 1:14-cv-147
)	Judge Tena Campbell
vs.)	
)	
DANIEL SCOTT PEAY, a)	Deposition of:
Morgan County Sheriff's)	<u>DANIEL SCOTT PEAY</u>
Sergeant; MORGAN COUNTY, a)	
Political Subdivision; and)	
JOHN and JANE DOES 1-10,)	
)	
Defendants.)	

October 13, 2015
9:40 a.m.

Location: SYKES MCALLISTER LAW OFFICES
311 South State Street, Suite 240
Salt Lake City, Utah

Reporter: Melinda J. Andersen
Certified Shorthand Reporter and Notary Public

Johnson v. Peay et al. * 10/13/15 * Deposition of: DANIEL SCOTT PEAY

A P P E A R A N C E S

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P R O C E E D I N G S

DANIEL SCOTT PEAY,

called as a witness by and on behalf of
the Plaintiff, having been first duly sworn,
was examined and testified as follows:

EXAMINATION

BY MR. SYKES:

Q. Would you tell us your full name and your
business address?

A. Daniel Scott Peay, 48 West Young Street,
Morgan, Utah.

Q. It's a beautiful community by the way.

A. Yes.

Q. Tell me about your history and background.

A. Well, are we talking employment?

Q. Yes. Let's start with high school. Where did
you go to high school and when did you graduate?

A. Pleasant Grove High and I graduated in 1981.

Q. What did you do after that?

A. I married my wife soon after that and I've been
working ever since.

Q. So you married in '81 or '82?

A. '81.

Q. How many children do you have?

A. Nine.

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1 A. Yeah.

2 Q. Fair enough. You had your weapon pointed at
3 her?

4 A. Yes.

5 Q. And you're out of danger?

6 A. I am out of danger, yes, at that point. You
7 can see just prior to that I had to back out of the way. I
8 clearly felt she was coming towards me.

9 Q. Let's go ahead and play this. I don't think I
10 can play it in slow motion, but let me see. Here at 11:07
11 on the counter I'm going to continue to play and try to
12 stop when the shot is fired. We're at 11:08. Do you agree
13 that the shot was just fired?

14 A. Yes.

15 Q. You saw the residue from your pistol?

16 A. I saw the recoil from the gun.

17 Q. The recoil from the gun. You just fired at
18 her. You might not have known it at the time, but you hit
19 her right in the head, didn't you?

20 A. I did.

21 Q. In the eye?

22 A. Yes.

23 Q. Took out her eye?

24 A. Yes.

25 Q. At this point as to what happened, what you

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1 Q. But can you tell me the substance of what you
2 told him?

3 A. To the best of my recollection I told him about
4 the chase, about how it came to an end. I told him about
5 how the person in the vehicle turned the vehicle around and
6 came at me, how she screamed in rage, how she rammed my
7 vehicle. I told him how she looked over at my brother,
8 screamed, put it in gear, revved her engine up and went
9 after him.

10 Q. That's what you told Kevin Edwards that night?

11 A. I don't know if it was that night. I don't
12 recall exactly what I told him that night. But that would
13 have been the substance of what took place and what I
14 talked to him about.

15 Q. Are you fairly confident that you told him that
16 she "went after Christian"?

17 A. I couldn't -- I don't know what my words were
18 that I used. It's been almost three years ago.

19 MR. STIRBA: But he's talking about substance.

20 THE WITNESS: Substance, yes.

21 Q. Let's take a look at the exhibit here. If you
22 could go to Exhibit 2 and if you would go to 258. About
23 the middle it says deputy interview. Do you see that?

24 A. Yes.

25 Q. Bold heading. It says, I was contacted by

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1 Julie Curtis. This is page 258 of Exhibit 2. I was
2 contacted by Julie Curtis who related Sergeant Peay was
3 ready to give us his statement. Arrangements were made to
4 meet with him on Wednesday 11/28/12 at 10:00 a.m. at the
5 Syracuse Police Department. Do you see that?

6 A. Yes.

7 Q. The interview was audio and video recorded and
8 has been transcribed. It says, also present with Sergeant
9 Peay was his supporter and Chief Deputy, Kevin Edwards. Do
10 you see that?

11 A. Yes.

12 Q. Turn to page 259. It says here about ten lines
13 down, throughout the majority of the chase. Do you see
14 that?

15 A. No. Okay. Yes.

16 Q. Speeds up to 75 miles per hour.

17 A. Yes.

18 Q. That was maybe just one brief time, right?

19 A. I don't recall. I would have to go back and
20 listen to the audio recording of the chase, but it seems to
21 me that it actually got up to 90 miles per hour.

22 Q. In the middle, Sergeant Peay was assisted by
23 UHP who deployed spike strips at a location known as
24 Horseshoe Bend on I-84.

25 A. Yes.

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1 Q. It says, the spikes were successful and the
2 front tires and driver's rear tire went flat. Is that your
3 recollection?

4 A. Yes, that is.

5 Q. You're apparently telling him this, that's why
6 I ask.

7 A. Yeah.

8 Q. Then it says, the suspect vehicle continued to
9 travel west on I-84 at speeds ranging from 35 mph to 65
10 mph, correct?

11 A. That sounds correct.

12 Q. Can you go that fast on rims?

13 A. She did. She absolutely did.

14 Q. Then it says, remarkably the driver was
15 maintaining control of the vehicle. Is that true?

16 A. Yes. She did hit the center barrier after
17 having the tires flat, but she maintained control of it.

18 Q. She actually stopped at a stop sign, didn't
19 she?

20 A. I don't recall.

21 Q. We'll read about it. Two-thirds of the way
22 down you're talking about Adams Street Toll Road exit 85
23 and Cottonwood Drive. Do you see that? And then it says,
24 the suspect vehicle slowed down significantly and Sergeant
25 Peay notified assisting units he wanted to initiate a high

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1 A. Not necessarily.

2 Q. Then it says, he said, "it was something that
3 really struck home to me and had an influence on how I
4 thought things were going to happen." You don't recall
5 telling them that?

6 A. I don't.

7 Q. Then he said, "she had a look and expression of
8 rage on her face and at that second it was directed at me."

9 A. Yes.

10 Q. Are you telling us then that this expression of
11 rage, you could see that at night with lights shining
12 through her window and police lights going off?

13 A. Yes.

14 Q. And you could see that she had an expression of
15 rage on her face?

16 A. Yes, I could.

17 Q. You heard her revving the engine apparently.
18 Then it says four lines from the bottom, Sergeant Peay
19 further related, she wasn't pinned in and she could have
20 went up the road or stopped, but she was turning and coming
21 at us. Do you see that?

22 A. Yes.

23 Q. Sergeant Peay said, "there was no question in
24 my mind when she came, that she was trying to hit me, that
25 it wasn't my truck she was trying to hit, she is looking at

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1 me and coming after me and trying to hit me."

2 A. Yes.

3 Q. Did you tell them something like that that
4 night?

5 A. Yes, I did.

6 Q. You said earlier you were aware that you could
7 be prosecuted for aggravated assault, shooting somebody
8 unnecessarily?

9 A. Yes.

10 Q. Did you tell them that to try to throw them off
11 of your case a little bit?

12 A. No, I didn't. That was accurate.

13 Q. Are you telling us then -- let me play this
14 video again. Is this an accurate -- let me back up a
15 little bit. We're back to --

16 MR. STIRBA: Is this Dingmann again?

17 Q. Dingmann again. We are back to 10:33 and going
18 forward on that. By the way, the actual time counter reads
19 at the bottom 22:15. That's Dingmann's counter. Here we
20 have 11:53 her vehicle coming forward and striking the car.
21 We talked about this earlier. This is 10:58 on the
22 counter, on the internal counter of this event.

23 A. Okay.

24 Q. Are you telling me that what happened -- the
25 shot was fired, I think, 11:08 on the counter. So we're

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1 in a deposition. You know that.

2 MR. STIRBA: Well, no. But you can't
3 misrepresent the thing to the witness either. That's the
4 problem.

5 Q. At 10:58 she strikes your car. And are you
6 telling me that during this time period --- let's talk
7 about 10:55 even through 11:08 when you fired the shot,
8 that this sequence supports the proposition that she was
9 trying to hit you?

10 MR. STIRBA: Objection, vague and ambiguous and
11 compound. But go ahead.

12 THE WITNESS: What I am saying is at this
13 moment right here and just preceding it, as you can see,
14 and it's clear from the statement here, she was focussed on
15 me and she tried to hit me. She was looking at me. I
16 could clearly see her through the windshield. She was
17 screaming and revving her engine and she came at me.

18 Q. Okay. Let's go back here. Going back to
19 10:49. You're not out of your vehicle yet. So it has to
20 be sometime between 10:49 on the counter and the time you
21 fired the shot, which is about 17 or 18 seconds later,
22 right?

23 A. Yes.

24 Q. Are you telling me this 17 or 18 seconds -- you
25 get out at 10:51, right? You saw yourself get out?

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1 A. Yes.

2 Q. Here you are at 10:57 and pointing your gun at
3 her and she strikes your car?

4 A. Yes.

5 Q. You're telling me that your impression of what
6 happened here is she was trying to hit you?

7 A. When I looked up -- when I exited my vehicle
8 and I came around and was coming around the back of my
9 vehicle as you can see there, that is absolutely my
10 testimony. I looked at her. She was focussed on me. We
11 made eye contact. She had an expression of rage on her
12 face, she was revving her engine and she was looking
13 directly at me and she came at me.

14 Q. Your view that you have expressed here that she
15 was trying to hit you --

16 A. Yes.

17 Q. -- is based upon making eye contact with her
18 and looking at the rage in her eyes directed toward you?

19 A. That's part of it, yes.

20 Q. Is there anything else?

21 A. If I were to look at you right now and have an
22 expression of rage and come at you in an aggressive manner,
23 you would be able to see that. And that's what I saw
24 there, is that she was coming at me in a very aggressive
25 manner.

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1 Q. That's what I'm asking. The basis of your
2 statement that you made here on the record, the basis of
3 your statement is that you looked in her eyes and then she
4 appeared to steer the car at you?

5 A. She was coming at me.

6 Q. But a significant part of your belief on that
7 was making eye contact with her under these conditions?

8 A. It was the expression of rage on her face as
9 she looked at me.

10 Q. Did you later learn what she blood alcohol
11 level was?

12 A. I've heard, but I have not read.

13 Q. What have you heard?

14 A. .4.

15 Q. I was going to say .32, but we're in the same
16 ballpark there. Do you think that a person that drunk is
17 capable of focussing on you as an officer, trying to hit
18 you?

19 MR. STIRBA: Objection, calls for speculation,
20 conjecture. But go ahead and answer.

21 THE WITNESS: My answer to that would be that
22 clearly she was because I saw that, I firsthand saw that.
23 She looked at me. She had rage directed at me and she came
24 at me.

25 Q. Then on page 259, the top of page 260, he,

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1 Q. And Christian Peay's vehicle on the right?

2 A. Yes.

3 Q. Everybody is pulling forward, including
4 Christian and you. She backs up. Dingmann comes in and
5 fills in the hole. Do you see that?

6 A. Yes.

7 Q. You're standing by the right rear of your
8 vehicle behind the point of impact. Are you trying to tell
9 me that you were at risk of getting hit here?

10 A. Absolutely I am. You can see from that video
11 she was probably inches from where my leg is. And also she
12 is hitting my truck which is pushing towards me. I don't
13 know if my truck made contact with me or not. That would
14 be why I sidestepped was to avoid that.

15 Q. How fast do you think she was going?

16 A. Fast enough to cause damage to my vehicle.

17 Q. You can have that at one mile an hour, can't
18 you?

19 A. You can. And you can crush bones at one mile
20 an hour.

21 Q. Do you have any idea how fast she was going at
22 this point?

23 A. I don't.

24 Q. More or less than 50 miles an hour?

25 A. It was less.

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1 Q. More or less than 10 miles an hour?

2 A. Less.

3 Q. More or less than 5 miles an hour?

4 A. I don't know.

5 Q. So you're telling us under oath, under oath
6 that you felt at 10:55 in the Dingmann video that you felt
7 yourself at risk of getting hit?

8 A. Yes.

9 Q. All right. You say you had to step out of the
10 way to avoid getting hit on page 249. Then it says, the
11 driver again put the vehicle in reverse, backed up, then
12 put the vehicle back in drive and accelerated straight
13 toward Deputy Peay.

14 A. Yes.

15 Q. That's what you told somebody?

16 A. Yes.

17 Q. Let's see if this is what you're talking about
18 here. Let's continue on. She backs up. We're at 11:03.
19 It looks to me like she is maybe six feet from you. Fair
20 statement?

21 A. Could be.

22 Q. And a little further from the Dingmann vehicle.
23 And then she comes forward. It looks like she is inching
24 forward. Here we are at 11:08 and you fire the shot. Are
25 you telling me that this language here that this person

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1 recorded is accurate?

2 MR. STIRBA: Wait a second. Excuse me, Bob.
3 You sort of went through a whole litany of information and
4 now I think you're asking a question.

5 MR. SYKES: I'm asking a question.

6 MR. STIRBA: It's a compound question and I'm
7 not sure where we are. Could you start all over again
8 please?

9 Q. Look at page 249. It says, the driver again
10 put the vehicle in reverse, backed up, then put the vehicle
11 back in drive and accelerated straight toward Deputy Peay.
12 You think that's an accurate statement of what happened
13 here?

14 A. It's accurate, yes. Absolutely it's accurate.

15 Q. She accelerated toward Deputy Peay.

16 A. Yes, she did.

17 Q. Aren't you off to the side?

18 A. I'm not Deputy Peay. I'm Sergeant Peay. We're
19 talking about Deputy Peay that is directly in front of her
20 vehicle right there.

21 Q. You think Deputy Peay is directly in front of
22 this vehicle?

23 A. Yeah, I know he is.

24 Q. I have another video you know.

25 A. Yes.

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1 Q. As the vehicle struck Deputy Peay's vehicle
2 Sergeant Peay fired one round from his 40 caliber Glock.
3 You think that's an accurate statement of what happened?

4 A. Yes.

5 Q. Did you tell Officer Hough that Kristine Biggs
6 accelerated toward you and then you fired?

7 A. I don't recall that, no.

8 Q. If Officer Hough somewhere said or recorded
9 that you told him that you fired because she accelerated
10 towards you, would that be in error?

11 MR. STIRBA: Once again let me make the
12 objection. It's an improper question. He doesn't have to
13 comment on somebody else's statement.

14 Q. Go ahead and answer please.

15 MR. STIRBA: Let me finish please. Go ahead
16 and answer.

17 THE WITNESS: I can't comment just because I
18 don't know what Hough told you. I can't testify to what he
19 told you.

20 Q. You don't have to know.

21 A. And I don't recall what I told Hough. I've
22 already told you that. I actually -- if Hough was in this
23 room I would not recognize him.

24 Q. Let me state it again.

25 A. Okay.

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1 Q. If you told Officer Hough that Kristine Biggs
2 accelerated toward you and so you fired, would that be
3 accurate or inaccurate of what you told him?

4 A. That is not accurate.

5 Q. Is it true that she was stopped when you fired?

6 A. Yeah, she probably was. I fired at the moment
7 of impact.

8 Q. She stopped for maybe a second. Let me back
9 that up again. 11:08 she appears to be stopped and then
10 there is the firing at 11:08 on the counter. Why did you
11 feel a need to shoot her when she was stopped?

12 A. When she went forward -- between the point
13 where she came at me and hit my vehicle and she backed up,
14 sometime between that time when she backed up and started
15 coming forward again I saw Christian out of my peripheral
16 vision and he was to my right. He was just to the side of
17 Dingmann's vehicle right here. She took her focus off me
18 and looked directly over at him and she screamed, revved
19 her engine and went forward. And as she hit right here,
20 Christian dropped out of my view. I didn't know if he was
21 under her vehicle, if she had hit him, or if she was
22 pinning him between the vehicles. And I fired to stop her
23 from injuring my brother.

24 Q. But when you fired she stopped?

25 A. She did.

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1 Q. And if you look you could have clearly seen
2 Christian, could you not?

3 A. No, I couldn't clearly seen him because he had
4 already -- he was out of my view. I just testified to
5 that.

6 MR. SYKES: It was Hardman, wasn't it?

7 MR. STIRBA: Yes, I think that was the other
8 one that is an exhibit in the previous depositions.

9 Q. This was the other exhibit, the Hardman video.
10 Here we go. This is at 4:06. Christian Peay gets out at
11 4:10. This is not synced by the way. Do you agree looking
12 at this he is in no danger?

13 A. From -- I can't look at this and say that.
14 Yeah, he was in danger because obviously he was backing up
15 trying not to get hit, which would match my testimony that
16 he went out of my view right there. I just didn't see that
17 it was him backing up.

18 MR. STIRBA: Let the record reflect that we're
19 looking at the Hardman video which was a prior marked
20 exhibit to some depositions. It's stopped now -- what is
21 the counter?

22 MR. SYKES: 4:18.

23 MR. STIRBA: At 4:18.

24 Q. And I think that is Exhibit 15 -- no, wait a
25 minute. What exhibit is that? You agree, however, looking

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1 Q. It says on B, a deputy may use deadly force to
2 stop a fleeing subject. Do you think she was a fleeing
3 subject?

4 A. She had been fleeing, but she was coming at us.
5 She wasn't fleeing anymore, she was attacking us.

6 Q. When the deputy has probable cause to believe
7 that the person has committed or attempts to commit a
8 felony involving the infliction or threatened infliction of
9 serious bodily injury or death. Do you think she qualified
10 that day for that?

11 A. Yes, she did.

12 Q. Do you know if they prosecuted or dismissed the
13 charges of aggravated assault?

14 A. I don't know.

15 Q. The deputy reasonably believe there is an
16 eminent risk of serious bodily injury or death to any other
17 person if the subject is not immediately apprehended. Do
18 you see that policy?

19 A. Yes.

20 Q. The Davis County attorney found that you did
21 not qualify for the use of deadly force, right?

22 A. I can't -- that's what he said. It said in his
23 opinion.

24 Q. And you disagree with that?

25 A. I do.

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1 Q. Let's turn back to Exhibit 1. While you're
2 getting there, you remember doing the interview I assume
3 with Ms. James and Mr. Herndon at the Syracuse Police
4 Department that day, didn't you?

5 A. I did an interview, yes.

6 Q. Turn to internal page 18 and MCSO 279.

7 A. 379?

8 Q. 279. Actually turn to 277 first. You say on
9 line 540 you saw other officers getting out of cars. And
10 you say on line 540, so, they, I knew they were out of
11 their cars, I knew Christian had gotten out of his car, and
12 it really wasn't up until the point, that, that I felt like
13 I had to shoot, that my television -- I think you mean
14 tunnel vision, don't you?

15 A. It is tunnel vision.

16 Q. It's a typo, right?

17 A. It is.

18 Q. -- really started coming in. What are you
19 talking about when you say tunnel vision?

20 A. After I saw Christian off to my right side and
21 as she came to him and the stress increased, my eyesight
22 came in a little bit and I was focussed on her completely
23 and I couldn't see my brother anymore. I wasn't seeing to
24 the side as much as I was to the front.

25 Q. This is something they teach you in POST,

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1 A. He was in danger, absolutely.

2 Q. If you're behind two police vehicles that are
3 stopped and parked, she is coming at you 1 to 5 miles an
4 hour, and the gap is small, there is no way he is going to
5 get hit, is there?

6 MR. STIRBA: I'm going to object, calls for
7 speculation, conjecture on his part. Go ahead.

8 THE WITNESS: I know that she hit both of those
9 vehicles and she hit Christian's so hard that she broke the
10 grill guard that is front that we use to push cars, that
11 protect vehicles. She broke that and pushed in the grill
12 of his truck and moved his truck back. She hit with a
13 tremendous amount of force. That force could have easily
14 disabled or killed him.

15 Q. Then turn to page 279, line 599. Herndon asked
16 you, how close do you think she came. Earlier on 595 he
17 said, and she did not ever strike you with the vehicle.
18 You said, no, no. He says okay. And you said, I know she
19 came very close, but no she didn't. Herndon, how close do
20 you think she came. Answer, I remember thinking as I come
21 around the side, that she looked at me when she come and
22 hit, I was surprised that I didn't get hit. And I don't
23 know if it was inches, I don't know if it was a foot, or if
24 I just, I, in my mind I was gonna get hit, and I was trying
25 to move out of the way of it, but I didn't get hit.

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1 You think it might have been inches or a foot
2 you were away?

3 A. It's clear from that that was my recollection,
4 yes.

5 Q. At the time?

6 A. Yes.

7 Q. Do you recognize now that you were pretty far
8 off?

9 A. No, I wasn't pretty far off. If you look at
10 that it --

11 Q. Like five or six feet?

12 MR. STIRBA: Wait, wait, wait. Let him finish.

13 THE WITNESS: The time we're talking about here
14 was when she came at me. We're not talking about the
15 second incident when she went after Christian. When she
16 came at me and hit my vehicle, she was within inches or a
17 foot.

18 Q. Then 604, Herndon, when do you think that
19 Christian was in danger. Answer, when she focussed on him,
20 and uh, put it in gear and came, in my mind she was going
21 after him with that truck, and uh, there was no question in
22 my mind that was what she was doing, and I actually had a
23 concern that I had fired too late. You said that?

24 A. Yes, I did.

25 Q. Let's take a quick look here. Looking at the

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1 Dingmann video at 10:49 counter number. Let's me back up
2 here. Let's go to 10:49. You're out of the car at 10:52,
3 strikes at 10:56. After she strikes the vehicle -- let me
4 just back up a hair here. When that vehicle strikes here,
5 looking at 10:55, it looks to me like it's a lot further
6 away than inches or a foot.

7 MR. STIRBA: That mischaracterizes what we've
8 just seen. It's not when she struck the vehicle.

9 Q. Isn't that a lot further away than inches or a
10 foot as we're looking at 10:55?

11 MR. STIRBA: I'm going to object again it
12 mischaracterizes what we just saw on the video.

13 Q. Isn't that further away than inches or a foot?

14 A. Yeah, that is because she hasn't struck my
15 vehicle yet. You can see as you played it forward right
16 there, as she strikes the vehicle you can see me bend
17 backwards at the waist and move my feet and legs backwards
18 to avoid being hit. And right there where you just paused
19 it, yes, I'm within inches or a foot of her car.

20 Q. We're at 10:55, a little further at 10:55 than
21 we were. And you're leaning forward --

22 A. Uh-huh, and my legs are backwards.

23 Q. -- and you're telling me that you are inches or
24 a foot away from her vehicle?

25 A. Uh-huh, yes.

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1 Q. It could be just inches?

2 A. It could be, yes.

3 Q. You go back just a fraction after she hits you.

4 It looks to me like you're about four feet?

5 A. Well, I took a step back there. You can say
6 that's four feet. It doesn't look like four feet to me.

7 Q. How far does it look to you right now?

8 A. It looks like a foot.

9 Q. A foot?

10 A. Yes.

11 Q. Even though she hasn't hardly moved, you walk
12 forward at that point toward the car?

13 A. I did.

14 Q. Is that out of fear? You're walking -- you're
15 afraid you're going to get hit so you walk forward toward
16 the car?

17 A. Her vehicle is in reverse, so obviously if it's
18 in reverse now she can't go forward. But I came out of
19 cover because I did everything I could do to get her to
20 stop. I was trying to yell at her. I was yelling
21 commands. I was trying to communicate with her. I was
22 doing everything I could to stop her and I came out of
23 cover to do that.

24 Q. But if you're afraid of getting hit -- and
25 correct me, I don't want to be argumentative because I'll

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1 Q. So you're telling me as you are standing here
2 at 11:06 you're not sure whether you can see what would be
3 the driver's side front corner?

4 A. I don't recall if I saw it or not.

5 Q. If you could see it, isn't it true that
6 Christian Peay ain't there?

7 MR. STIRBA: That's a hypothetical, calls for
8 speculation.

9 Q. Looking at the video here. He's not there, is
10 he?

11 A. He's not in that video, but he's out there.

12 MR. STIRBA: He's in the Hardman video.

13 Q. You can't see him in this video at all, can
14 you?

15 A. No.

16 Q. If that car comes straight back to the camera,
17 Christian isn't going to get hit, is he?

18 A. Not if she comes straight back, but that's not
19 what she was doing. She turned her wheels. She was going
20 -- as you see right there, she did turn her wheels and she
21 went directly toward Christian.

22 Q. Now she stops and she stopped here for about a
23 second, right?

24 A. No, she doesn't stop. She rammed the vehicle
25 and she keeps --

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1 Q. And then you open fire?

2 MR. STIRBA: Wait a minute. Let him finish.

3 THE WITNESS: She rams the vehicle and she is
4 still accelerating. Her tires are spinning. She is
5 churning up the asphalt and she is still moving. She is
6 pushing against that vehicle.

7 Q. 11:07, do you agree she stopped for an instant?

8 A. No.

9 Q. You don't?

10 A. Not at 11:07. She hasn't made contact yet.

11 Q. She stopped for an instant at 11:08?

12 A. She's made contact and this car stopped her,
13 but she is still accelerating and pushing against the car.

14 MR. SYKES: Let's take a short break and I'll
15 talk to my expert witness here and we'll be right back.

16 (Off the record.)

17 Q. Let's do a little bit more here. What was your
18 state of mind when you got out of the car? What were you
19 thinking? What emotions were going through you?

20 MR. STIRBA: I'm going to object, it's
21 compound. You want thinking or emotions?

22 MR. SYKES: Both.

23 MR. STIRBA: Answer them one at a time.

24 THE WITNESS: Well, I don't know if I recall a
25 hundred percent what I was thinking or feeling. I know as

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1 Q. I understand your claims. Do you agree with me
2 that you would not be justified at point B in using deadly
3 force that you could have, but did not use at point A?

4 A. I'm trying to understand your question I guess.

5 Q. I'm saying what happened that caused the threat
6 at point A where you could have used deadly force, that's
7 passed now in the hypothetical. You're now at point B,
8 seven or ten seconds later. What happened at point A
9 doesn't justify using deadly force at point B if the threat
10 to you is no longer there, right?

11 A. That's correct, but obviously it influences
12 that. If that person -- in her case she is using her
13 vehicle as a weapon. She still is using that weapon. She
14 just isn't using it on me anymore. She uses it against a
15 fellow deputy.

16 Q. But at point A Deputy Christian Peay was not at
17 risk, right?

18 A. No, he wasn't.

19 Q. He was at risk at maybe point B?

20 A. Right.

21 Q. But you were allegedly, according to you, at
22 risk at point A, but you didn't shoot?

23 A. Right.

24 Q. So you can't shoot her seven seconds later
25 because you were at risk seven seconds before, right?